

Attachment 4
Memorandum of Agreement with Seattle School District

**MEMORANDUM OF AGREEMENT NO. 14-042-A BETWEEN
THE CITY OF SEATTLE
AND
SEATTLE SCHOOL DISTRICT #1
FOR**

Thornton Creek Confluence Improvements Project on Nathan Hale High School Property

THIS MEMORANDUM OF AGREEMENT ("Agreement") is made by and between the City of Seattle ("City"), a municipal corporation of the State of Washington, acting through its Seattle Public Utilities Department ("SPU"), and Seattle School District #1, ("District").

1. TERM OF AGREEMENT.

The term of this Agreement shall begin when fully executed by all parties, and shall end on December 13, 2019, unless amended by written agreement or terminated earlier pursuant to the provisions hereof.

2. BILLING AND PAYMENT.

Total compensation under this Agreement shall be a fixed, lump-sum amount of Twenty Four Thousand, Nine Hundred Sixty Dollars (\$24,960) herein after referred to as the "Contract Amount," unless modified by a written amendment to this Agreement. SPU shall pay the Contract Amount in a single payment within 90 days of approval by the City Council in accordance with EXHIBIT B – TERMS AND CONDITIONS. No invoice will be required.

3. SCOPE OF SERVICES.

The purpose of this agreement is to: 1) Provide SPU or its contractors with site access to Nathan Hale High School property for the purposes of monitoring and maintaining the stream re-alignment project ; 2) clarify respective roles and responsibilities for site maintenance and monitoring and 3) define compensation to be provided to Seattle School District #1 for changes in the locations and amounts of buildable lands resulting from the creek re-alignment as more fully described in EXHIBIT A – SCOPE OF WORK; attached hereto and made a part of this Agreement.

The Provider has already provided, through separate agreements: 1) temporary construction easements and a permanent bridge maintenance agreement which will be under the jurisdiction of the Seattle Department of Transportation.

4. ADDRESSES FOR NOTICES AND DELIVERABLE MATERIALS.

All official notices under this Agreement shall be delivered to the following addresses (or such other addresses as either party may designate in writing):

SPU:	Provider:
Contact during construction period: Jason Sharpley, Project Manager (206) 615-0030 700 Fifth Ave, Suite 4900 PO Box 34018 Seattle, WA 98124-4018 Jason.sharpley@seattle.gov	Kathy Johnson, Facility Operations Program Manager Seattle School District #1 Property Management – MS 23-365 2445 3rd Avenue South Seattle, WA 98124-1165

Contact beyond construction period: Betsy Lyons, Senior Capital Projects Coordinator (206) 233-2511 700 Fifth Ave, Suite 4900 PO Box 34018 Seattle, WA 98124-4018 Betsy.lyons@seattle.gov	
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5. NO JOINT UNDERTAKING.

Nothing in this Agreement shall be construed to make or render the parties hereto partners, joint ventures or participants in any joint undertaking whatsoever.

6. SCHEDULE.

The parties shall comply with the schedule appearing in ATTACHMENT A – SCOPE OF WORK. Compliance with the schedule is important to successful completion of the Project. The SPU Project Coordinator and the District Facility Operations Program Manager shall promptly and regularly notify each other of any occurrences affecting the schedule and shall attempt to mutually agree upon an amended schedule if necessary or appropriate, to be effective upon execution of an Amendment to this Agreement in accordance with Section 15. Notwithstanding, failure to comply with the schedule shall constitute a Default and be grounds for termination unless or until any Amendment is executed.

7. NO THIRD PARTY BENEFICIARIES.

This Agreement is entered into solely for the mutual benefit of the parties hereto. This Agreement is not entered into with the intent that it shall benefit either party's agents, assigns, consultants or contractors, and no such other person or entity shall be a third party beneficiary of this Agreement.

8. PUBLICATION.

Each party may publish the results of the Project, and may acknowledge its respective role in and support of the Project.

9. ASSIGNMENT.

This Agreement shall not be assigned in whole or in part by either party without the prior written approval of the other party.

10. COMPLIANCE WITH LAW.

The parties to this Agreement shall comply with all Federal, State, and local laws and ordinances.

11. DEFAULT AND TERMINATION.

Failure to keep or perform any material term or condition of this Agreement shall be a default hereunder (a "Default"). Upon a Default, the aggrieved party shall provide written notice to the defaulting party, specifying the nature of the Default, and the aggrieved party's intention to terminate this Agreement if the Default is not corrected within thirty (30) days of the date of the notice, or longer period if mutually agreed by the parties. If the defaulting party fails to cure within the stated period, the aggrieved party may thereafter terminate this Agreement without any further proceedings. The aggrieved party will have available to it all remedies provided at law and equity.

12. SEVERABILITY.

If any provision of this Agreement or any provision of any law, rule or document incorporated by reference into this Agreement shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which legally can be given effect without the invalid provision. To this end, the provisions of this Agreement are declared to be severable.

13. APPLICABLE LAW.

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The jurisdiction and venue of any action brought hereunder shall be in the Superior Court of King County.

14. AUDIT.

During the progress of the Project and for a period of no less than three years from the Completion Date, each party will keep and make available for each other's inspection and audit all records pertaining to the Project, including accounting records. The parties shall furnish to each other copies of these records upon request and shall maintain the records in accordance with work order accounting procedures prescribed by the Division of Municipal Corporations of the State Auditor's Office.

15. AMENDMENT.

This MOA shall not be amended or modified except in writing and signed by the Director of SPU or his designee and the Assistant Superintendent for Facilities of District hereto.

16. ENTIRE AGREEMENT.

This Agreement and any written attachments or Amendments thereto, constitutes the complete contractual agreement of the parties and any oral representations or understandings not incorporated herein are excluded.

IN WITNESS WHEREOF, in consideration of the terms, conditions and covenants contained herein, or attached and incorporated and made a part hereof, the parties have executed this Agreement by having they representatives affix their signatures below.

SEATTLE SCHOOL DISTRICT #1


By  5/29/14
Signature Date

Dr. Lester Herndon

**ASSISTANT SUPERINTENDENT OF CAPITAL,
FACILITIES AND ENROLLMENT**

CITY OF SEATTLE

SEATTLE PUBLIC UTILITIES

By  6/10/14
Signature Date

Nancy Ahern

**DEPUTY DIRECTOR SEATTLE PUBLIC
UTILITIES**

EXHIBITS:

A –SCOPE OF WORK

B –TERMS AND CONDITIONS

FIGURES:

1. CREEK REALIGNMENT AND PLANT ESTABLISHMENT PROJECT AREA (PROJECT AREA)
2. PROPOSED CREEK REALIGNMENT AND APPROXIMATE LOCATON OF ENVIRONMENTALLY CRITICAL AREA
RIPAIRAN BUFFER AND EXPECTED NEW ORDINARY HIGH WATER MARK (OHWM)

EXHIBIT A

SCOPE OF WORK

Provider:	Seattle School District #1 (District)
Contract No.:	14-042-A
Contract Title:	Thornton Creek Confluence Improvements Project on Nathan Hale High School Property
PROJECT BACKGROUND STATEMENT:	
<p>Seattle Public Utilities (SPU) is undertaking the Thornton Creek Confluence Improvements Project to replace a culvert under 35th Ave NE on the south branch of Thornton Creek, which will remove a stream flow choke-point, significantly increase the creek floodplain storage area downstream of 35th Ave NE, and improve habitat for salmon and other riparian species.</p> <p>As part of this larger effort, SPU will also realign the south branch of Thornton Creek on Nathan Hale High School property which is the subject of this agreement. In addition to creek realignment, SPU will install habitat features on District property including log and rock weirs, large woody material and new riparian vegetation.</p> <p>These creek and culvert improvements mutually benefit SPU and the District by reducing flooding, flooding impacts and associated maintenance in the immediate project vicinity, and facilitating design and construction of future projects upstream on the south branch of Thornton Creek that will also benefit the Nathan Hale High School property. The creek re-alignment and increased floodplain area will result in changes to the ordinary high water mark (OHWM), creek area and amount and location of buildable lands on District property for which SPU will compensate the District.</p> <p>This MOA therefore: 1) defines monitoring and maintenance obligations during and after construction; 2) notification and approval process for SPU or contractors to gain necessary access to District property for monitoring and maintenance and 3) identifies agreed upon compensation SPU is to provide to the District for changes to the amount and location of buildable lands following creek re-alignment.</p>	

TASK 1:	Plant Establishment (Three year period beginning at completion of planting and estimated as October 2014- October 2017)
TASK DESCRIPTION:	
<p><u>District Roles and Responsibilities:</u></p> <p>1.1 District will provide access to SPU or its contractors for three years following completion of construction (scheduled through 2017) for plant establishment.</p> <p>1.2 District will maintain its property outside of the newly planted project landscape per its pre-project maintenance standards and legal requirements.</p> <p><u>SPU Roles and Responsibilities:</u> The three years following completion of construction is critical for plant establishment. During this period SPU or its contractors will:</p> <p>1.3 Maintain and replace as necessary, the riparian vegetation planted during construction within the</p>	

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project area (Figure 1) as required by HPA Permit # 132575-1 ("Permit") issued to SPU by the Washington Department of Fish and Wildlife on January 9, 2014. SPU or its contractor will pay for irrigation water which may be provided by temporary irrigation and/or water trucks or other means as determined during construction.

1.4 Control invasive plants within the project area that threaten the newly planted native vegetation.

TASK ASSUMPTIONS:

1. Standards for plant establishment, at the end of the 3-year plant optimization period, must meet Permit requirements for the project which require an 80% survival rate at the end of that period.
2. Pesticides are not to be used except under very strict conditions and permits and as applied by a licensed applicator. Any proposed application by District in the project area during the 3-year plant establishment period must be approved by SPU prior to application.
3. During the plant establishment period, SPU's goal for control of invasive plants within the stream channel are to eradicate Class A weeds as mandated by the State, and eliminate or reduce Class B and C weeds as resources allow.

MATERIALS TO BE PROVIDED:

SPU will provide all necessary materials for monitoring plant establishment and is responsible for the cost and installation of any new replacement plantings in the riparian corridor.

TASK DELIVERABLES:

1. Replacement of plants as necessary by SPU or its contractors during 3 year optimization period to meet Permit requirements.

TASK 2:	Performance Monitoring (Five year period beginning at completion of restoration and estimated as October 2014-October 2019)
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TASK DESCRIPTION:

District Roles and Responsibilities:

- 2.1 Provide access to SPU or its contractors for up to 5 years following completion of construction (scheduled through 2019).

SPU Roles and Responsibilities:

- 2.2 SPU will complete project performance monitoring over an initial 3-year period within the project area (Figure 1). Project performance monitoring will include an evaluation of physical, chemical and biological project parameters. Should additional funding become available monitoring will be extended for an additional 2 years, upon written notice to District.

TASK ASSUMPTIONS:

1. Monitoring will be done in accordance with a monitoring plan currently being developed by SPU and available to District upon request.

MATERIALS TO BE PROVIDED:

SPU is responsible for the cost, installation and removal of all monitoring equipment including but not limited to piezometers, a flow monitoring station and stilling wells which measure water levels at and below the surface.

TASK DELIVERABLES:

1. Final monitoring plan and monitoring report will be provided to District upon request.

TASK 3:	Creek Optimization (Three year period beginning at completion of construction and estimated as October 2014- October 2017)
TASK DESCRIPTION:	
<p>3.1 <u>District Roles and Responsibilities:</u> District will allow SPU or its contractors access to the creek channel for three years following completion of construction (scheduled through 2017) to evaluate changes to the creek channel and to apply adaptive management strategies as needed to optimize creek performance, comply with Permit requirements and meet design specifications.</p> <p>3.2 Should any modifications be necessary, District will provide access to the site and perform required administrative support (e.g. review documents, meet with SPU or contractors etc.), at no additional cost to SPU.</p> <p>3.3 During the creek optimization period, District will notify SPU of any planned school activities adjacent to the creek channel and plant establishment area, to ensure such activities are consistent with Permit requirements and to avoid conflict with any planned SPU work.</p> <p><u>SPU Roles and Responsibilities:</u></p> <p>3.4 SPU contractors must register at the school office at the time of their site visit during the school year. Should school staff not be available, the District's Facility Office should be notified. If any noise making or construction related activity is necessary, prior notification to the school is required.</p> <p>3.5 SPU is required by Permits to maintain unimpeded fish passage related to the constructed project features. During the initial 3-year creek optimization period, SPU will inspect the creek channel and constructed features within the project area (Figure 1) annually, as well as after major storm events, to ensure Permit compliance, determine whether design specifications are met and if the system is on the anticipated development trajectory.</p> <p>3.6 SPU will notify the District Facility Operations Program Manager about any adaptive management actions that may be needed to optimize creek performance to meet Permit requirements and design specifications. Optimization of the creek channel may include the addition or removal of gravel or woody debris within the creek channel.</p> <p>3.7 SPU will be responsible for the cost and permitting of such adaptive management actions that are necessary to such ensure fish passage as required by Permit obligations for problems that can be attributable to the project, project design or SPU activities.</p>	
TASK ASSUMPTIONS:	
<p>1. The project is designed to be a natural system with limited on-going, active management. The creek channel is designed to withstand 100-year storm events and movement of the rock weirs and log weirs should not substantially affect integrity of the stream bank or flow dynamics. Some shifting of materials is to be expected.</p> <p>2. With the exception of SPU's responsibility for maintaining fish passage related to the constructed project features, District as landowner is responsible for all other creek maintenance needs including addressing other natural obstructions such as falling trees at its discretion or as may be required by applicable laws.</p> <p>3. Minor modifications (work that can be done easily by hand and can be authorized with a WDFW</p>	

<p>concurrence letter or through existing permits) may be done by SPU or its contractors with advance written notification to District, subject to Permit requirements. Should major modifications to the constructed features, including the creek channel and weir structures be necessary, SPU will provide written notice to the District Facility Operations Program Manager of the proposed modifications and collaborate on scheduling. Major modifications may include those that require heavy equipment or that would affect District's use of the site and will require coordination with District before being implemented.</p>	
<p>4. If any major modifications are needed they may be addressed through amendment of this MOA or through separate and subsequent agreements between SPU and District, as the parties may mutually agree.</p>	
MATERIALS TO BE PROVIDED:	
TBD based on need	
TASK DELIVERABLES:	
<p>1. Written notification by District to SPU of any school activities to occur immediately adjacent to the plant establishment area and creek.</p>	
<p>2. Written notification by SPU to District Facility Operations Program Manager of any required or potential major modifications to the constructed features.</p>	

TASK 4:	On-going Maintenance
TASK DESCRIPTION:	
<u>District Roles and Responsibilities:</u>	
<p>4.1 During the construction period, District will continue to maintain all school property as consistent with the school or District's customary landscape and maintenance obligations, except for areas within the construction site.</p>	
<p>4.2 Following completion of construction, District will resume maintenance of all school property consistent with the school's customary landscape and maintenance procedures, except where identified below as an SPU responsibility or if in conflict with project Permits.</p>	
<p>4.3 Beyond the 3-year creek optimization period, District will protect and maintain the restored area in a manner equal to the current level of management and per its pre-project maintenance standards and legal requirements.</p>	
<p>4.4 Beyond the 3-year creek optimization period, District agrees to provide SPU, with 5 days notice and with consent of the District, periodic access to the site, and at no additional cost to SPU, for the purpose of inspecting the creek and constructed features.</p>	
<p>4.5 Should any modifications of the constructed features be necessary beyond the 3-year creek optimization period, District will provide access to the site and perform limited administrative support (e.g. review documents, meet with SPU or contractors etc.), at no additional cost to SPU.</p>	
<u>SPU Roles and Responsibilities:</u>	
<p>4.6 During the construction period, SPU is responsible for maintaining the construction site, which is defined in the approved Temporary Construction Easement for the Construction Area and Haul Route.</p>	
<p>4.7 SPU is responsible for maintaining unimpeded fish passage related to the constructed project</p>	

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<p>features as required by Permits. Beyond the 3-year creek optimization period, SPU will periodically inspect the creek to evaluate the condition of the constructed features.</p> <p>4.8 SPU will be responsible for the cost and permitting of such adaptive management actions that are necessary to ensure fish passage as required by Permit obligations for problems that can be attributable to the project, project design or SPU activities.</p>	
TASK ASSUMPTIONS:	
<p>1. The project is designed to be a natural system with limited on-going, active management. The creek channel is designed to withstand 100-year storm events and movement of the rock weirs and log weirs should not substantially affect integrity of the stream bank or flow dynamics. Some shifting of materials is to be expected.</p> <p>2. With the exception of SPU's responsibility for maintaining fish passage related to the constructed project features, District, as landowner is responsible for all other routine (at District's discretion) and legally required creek maintenance or repair including addressing other natural obstructions such as falling trees.</p> <p>3. Minor modifications (work that can be done easily by hand) may be done by SPU or its contractors without advance written notification to District Facility Operations Program Manager, subject to Permit requirements. Should major modifications to the constructed features including the creek channel and weir structures be necessary, SPU will provide written notice to District Facility Operations Program Manager of the proposed modifications. Major modifications may include those that require heavy equipment or that would affect District's use of the site and will require coordination with District before being implemented.</p> <p>4. If and as any major modifications are needed they may be addressed through amendment of this MOA or through separate and subsequent agreements between SPU and District.</p>	
MATERIALS TO BE PROVIDED:	
TBD based on need	
TASK DELIVERABLES:	
<p>1. Completed inspection reports from SPU are available upon request from District.</p> <p>2. Written notice by SPU to District Facility Operations Program Manager of any recommended or required maintenance or adaptive management actions.</p>	

TASK 5:	Consent for Impacts of Creek Realignment and Compensation to Seattle School District #1 (\$24,960)
TASK DESCRIPTION:	
<p>5.1 District has consented and agreed to the realignment of the creek as shown on approved plans and Permits. District understands and agrees that the realignment of the creek results in changes to the riparian buffer boundaries as shown in Figure 2.</p> <p>5.2 SPU will compensate the Seattle School District #1 in a single lump sum payment amount of \$24,960 for changes to the amount and location of buildable lands on site resulting from changes in the creek extent and alignment.</p>	
TASK ASSUMPTIONS:	

1. The proposed changes to the creek location, extent and alignment will affect the potential future use of school property. The school district is not able to authorize such losses without compensation.
2. This compensation was mutually agreed to and based on an estimate of fair market value.
MATERIALS TO BE PROVIDED:
NA
TASK DELIVERABLES:
1. SPU shall make a single payment in the amount of \$24,960 to the Seattle School District #1 within 90 days of the approval by the Seattle City Council.

EXHIBIT B

(SPU MOA No. 14-042-A)

TERMS AND CONDITIONS

TERM OF THIS MOA		DOLLAR AMOUNT
START DATE	COMPLETION DATE	
Upon signature and approval by Council	December 13, 2019	\$ 24,960
BILLING AND PAYMENT TERMS (Describe how Departments are to handle billing and payment for this work.) (Additional billing and payment information can be attached as ATTACHMENT B-1)		
Upon approval of this MOA by the Seattle City Council, a single payment for the full dollar amount will be provided to the District.		
NAME OF DEPARTMENT KEY PERSONNEL ESSENTIAL TO THE PROJECT		
Jason Sharpley, Project Manager Betsy Lyons, Sr. Capital Projects Coordinator Deb Heiden, Field Operations and Maintenance		
NAME AND ADDRESS OF SPU'S PROJECT MANAGER		
Jason Sharpley, Project Manager (206) 615-0030; Jason.sharpley@seattle.gov 700 Fifth Ave, Suite 4900 PO Box 34018 Seattle, WA 98124-4018		
District NAME AND ADDRESS FOR DELIVERY OF NOTICES		SPU'S NAME AND ADDRESS FOR DELIVERY OF NOTICES
Seattle Public Schools Attn: Property Management PO Box 34165, MS 23-365 Seattle, WA 98124		During construction period: Jason Sharpley, Project Manager (At address listed above) Beyond construction period: Betsy Lyons, Senior Capital Projects Coordinator (206) 233-2511 700 Fifth Ave, Suite 4900 PO Box 34018 Seattle, WA 98124-4018

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(SPU MOA No. 14-042-A)

FIGURES

FIGURE 1. CREEK REALIGNMENT AND PLANT ESTABLISHMENT PROJECT AREA (PROJECT AREA)

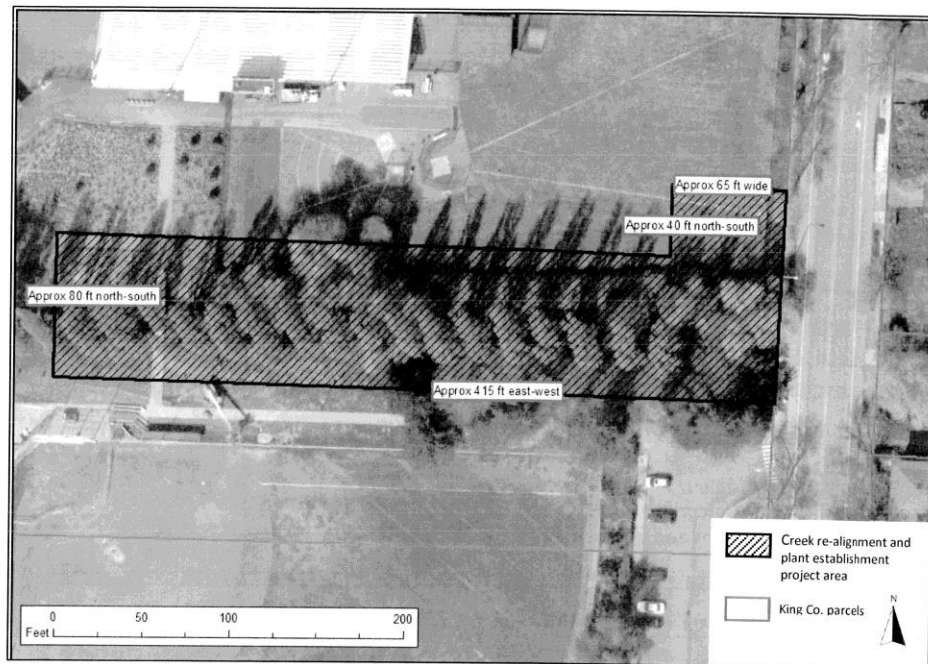


FIGURE 2. PROPOSED CREEK REALIGNMENT AND APPROXIMATE LOCATION OF ENVIRONMENTALLY CRITICAL AREA RIPARIAN BUFFERS AND EXPECTED NEW ORDINARY HIGH WATER MARK (OHWM)

